IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 25092 of 2001(K)

PETITIONER:

C.D.R.ANOOP KUMAR,
NAVAL ACADEMY PROJECT,
EZHIMALA – PAYYANNUR,
KANNUR DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY DEFENCE SECRETARY, MINISTRTY OF DEFENCE, SOUTH BLOCK, NEW DELHI.**

2. **THE CHIEF OF THE NAVAL STAFF, NAVAL HEAD QUARTERS, NEW DELHI – 110 011.**

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
SRI.P.GOPINATHA MENON, ADDL.CGSC
SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS for R1 & R2
SRI.P.PARAMESWARAN NAIR, CGC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.40892/2001 IN O.P.NO.25092/2001 K

CLOSED

22/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF INDIAN NAVALSHIP GARUDA REPORT DTD.6/03/1992 FROM AVIATION CADRE.**

EXT.P2: **COPY OF WITHDRAWAL LETTER DTD. 29/03/1992 FROM AVIATION CADRE.**

EXT.P3: **COPY OF OPINION DTD. 9/08/1991 OF THE SURGEON COMMANDER REGARDING THE COMPETENCY OF FLYING OF THE PETITIONER.**

EXT.P4: **COPY OF OPINION OF THE SENIOR ADVISOR IN AVIATION MEDICINE DTD. 2/09/1991.**

EXT.P5: **COPY OF LETTER DTD. 9/06/1993 FROM THE PETITIONER.**

EXT.P6: **COPY OF LETTER DTD. 11/10/1995 FROM THE CHIEF STAFF OFFICER TO THE CHIEF OF THE NAVAL.**

EXT.P7: **COPY OF LETTER DTD. 1/03/1996 FROM THE PETITIONER TO THE DEFENCE SECRETARY OF NAVAL HEAD QUARTERS.**

EXT.P8: **COPY OF JUDGMENT DTD. 26/03/2001 IN O.P.NO.18160/96 OF THIS HON'BLE COURT.**

EXT.P9: **COPY OF REPRESENTATION DTD. 18/04/2001 FROM THE PETITIONER.**

EXT.P10: **COPY OF REPLY DTD. 25/05/2001 TO THE PETITIONER.**

EXT.P11: **COPY OF THE ORDER DTD. 25 AUGUST, 1993 FROM THE COMMODORE, NAVAL HEAD QUARTERS, NEW DELHI.**

...2/-

O.P.NO.25092/2001 K

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE REPORT OF THE PETITIONERS FLYING RECORD.

EXT.R1(B): COPY OF LETTER DTD. 6/01/91 ISSUED BY PETITIONER.

EXT.R1(C): COPY OF LETTER DTD. 26/06/1991 ISSUED BY PETITIONER.

EXT.R1(D): COPY OF THE LETTER DTD. 5/12/1991 ISSUED TO PETITIONER.

EXT.R1(E)(1): COPY OF THE DIFFERENT SORTIE REPORTS.

EXT.R1(E)(2): COPY OF THE DIFFERENT SORTIE REPORT.

EXT.R1(F); COPY OF THE LETTER DTD. 29/01/1992 ISSUED BY WEDTERN NAVAL COMMAND.

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 25092 of 2001(K)

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Dated this the 22nd day of June, 2007

J U D G M E N T

The petitioner is one to whom Indian Naval Air Publication-2 applies. In terms of Article 0501.2 thereof, the privilege of wearing the aircrew badges and further employment of an officer or a sailor in Air Crew duties can be withdrawn for inability to carry out the required duties, indiscipline or other reasons. Such withdrawal can be ordered by the Naval Headquarters on the recommendations of the Commanding Officer or of a Court Martial.

2. While it is the admitted situation that the petitioner has not been court martialled, his employment in aircrew duties has been permanently withdrawn without the recommendations of the Commanding Officer, that is to say, without considering any recommendation of the Commanding Officer in that regard.

3. While it is not seen to be necessary within the province of the jurisdiction of this Court to deal with the other contentions and enter on an evaluation of the factual disputes, the aforenoted violation of Article 0501.2 of INAP-2 requires to be remedied by the Naval Headquarters calling for a fresh report from the Commanding Officer and reconsidering the case of the petitioner, if need be, under Article 0501.2 of INAP-2.

In the result, this original petition is disposed of directing that the Naval Headquarters shall call for the recommendation of the Commanding Officer in regard to the petitioner's case and deal with it, in terms of Article 0501.2 of the INAP-2. Let this be done within a period of three months from the date of receipt of a copy of this judgment. Impugned Ext.P10 shall stand set aside to enable the aforesaid process. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 25092 of 2001(K)

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J U D G M E N T

22nd June, 2007